

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

2013 MAR 18 A 10:10

CLERK OF DISTRICT COURT  
RICHMOND, VIRGINIA

DAVID ELLIOTT GLUCKMAN,  
2527 Lauderdale Drive  
Richmond, VA 23233

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
LABOR,

200 Constitution Ave., NW  
Washington, DC 20210

Defendant.

Civil No. 3:13CV169

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. Plaintiff, David E. Gluckman, by counsel, files this Complaint for injunctive and other appropriate relief against Defendant, the United States Department of Labor ("DOL"), pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq.

2. Defendant has failed to produce documents Plaintiff requested under FOIA within the statutory time limit prescribed under 5 U.S.C. § 552(a)(6).

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 28 U.S.C. § 1331.

4. Venue properly lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B), as the Plaintiff resides within this district.

### **PARTIES**

5. Plaintiff is a citizen of the United States and resides in Henrico County, Virginia.

6. Defendant is a department of the Executive Branch of the United States government and is an “agency” within the meaning of 5 U.S.C. § 552(f)(1).

7. The Employment and Training Administration (“ETA”) is an entity within Defendant.

8. A component of ETA is the Office of Foreign Labor Certification (“OFLC”). OFLC administers and carries out Defendant’s responsibilities pursuant to 8 U.S.C. § 1182(a)(5)(A) to certify, in appropriate cases, permanent labor certification applications filed by employers on behalf of foreign nationals. Obtaining a certified permanent labor certification application from Defendant is generally the first step an employer must take in order to sponsor a foreign national employee for permanent residence (i.e., a “green card”).

### **FACTS**

9. On March 15, 2012, Plaintiff filed a FOIA request with Defendant via electronic mail for certain documents relating to OFLC’s administration of the permanent labor certification application program (Exhibit A).

10. In a communication dated April 4, 2012, Defendant acknowledged receipt of Plaintiff’s request and stated that his request had been assigned to OFLC on March 15, 2012 (Exhibit B).

11. On August 3, 2012, Defendant contacted Plaintiff via electronic mail and regular mail (Exhibit C). Defendant stated that it had identified an estimated 2,441 pages of material responsive to Plaintiff’s FOIA request and asked for an advance payment of \$223.07.

12. Plaintiff submitted payment in the amount of \$223.07 to Defendant on August 9, 2012. Defendant subsequently deposited this payment.

13. On September 26, 2012, Defendant requested clarification from Plaintiff about the scope of his request. Plaintiff responded to Defendant's request the same day (Exhibit D).

14. After September 26, 2012, Plaintiff made numerous attempts, through electronic mail and by phone, to inquire about the status of his request. Plaintiff contacted the FOIA Coordinator for OFLC and Defendant's FOIA Public Liaison, among others.

15. To date, Defendant has not produced a single document in response to Plaintiff's FOIA request. Nor has Defendant denied Plaintiff's FOIA request.

16. Defendant has not asserted any justification for withholding any documents responsive to Plaintiff's FOIA request.

17. More than twenty business days have passed since Defendant received Plaintiff's FOIA request. Defendant has not complied with the time limits outlined in FOIA. As a result, Plaintiff has exhausted his administrative remedies under 5 U.S.C. § 552(a)(6)(C).

### **CAUSE OF ACTION**

#### **COUNT ONE:** **Violation of the Freedom of Information Act**

18. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17 above as if fully stated herein.

19. Plaintiff's FOIA request reasonably described the records at issue and adhered to all applicable rules and regulations.

20. The records requested by Plaintiff are within Defendant's control.

21. The requested records do not fall within any FOIA exception or exemption.

22. Defendant has violated FOIA, 5 U.S.C. § 552(a), by failing to timely and fully produce the records that Plaintiff requested.

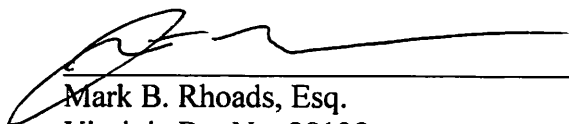
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully asks the Court to:

1. Order Defendant to produce, by a date certain, any and all records that are responsive to Plaintiff's FOIA request and a *Vaughn* index of any and all responsive records withheld under claim of exemption;
2. Enjoin Defendant from withholding any and all non-exempt records that are responsive to Plaintiff's FOIA request;
3. Award Plaintiff attorneys' fees and other costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E); and
4. Grant such other relief as the Court deems just and proper.

Dated: March 18, 2013

Respectfully Submitted,



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